

Tab 2 BKK Ex. 2



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October 29, 2009

VIA OVERNIGHT DELIVERY

Chemtura Claims Processing Center
c/o Kurtzman Carson Consultants LLC
2335 Alaska Avenue
El Segundo, CA 90245

RE: Proofs of claim - *In re Chemtura Corporation*, No. 09-11233 (REG); *In re Great Lakes Chemical Corporation*, No. 09-11247 (REG); *In re Great Lakes Chemical Global, Inc.*, No. 09-11249(REG); *In re ISCI, Inc.*, No. 09-11252 (REG); *In re Uniroyal Chemical Company Limited (Delaware)*, No. 09-11258 (REG); United States Bankruptcy Court, Southern District of New York

Dear Sir or Madam:

Enclosed for filing are five proofs of claim of the California Department of Toxic Substances Control, one in each of the above five bankruptcy cases.

Also enclosed are copies of the proofs of claim to conform.

Please file each original proof of claim in the bankruptcy case specified on the proof of claim, conform the copies, and return the conformed copies to me in the enclosed pre-paid envelope.

Chemtura Claims Processing Center
c/o Kurtzman Carson Consultants LLC
October 29, 2009
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Thank you for your assistance. Please contact me at (213) 897-2628 if you have
questions.

Sincerely,



THOMAS G. HELLER
Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

TGH:cc

Enclosures

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

13 **In re:** CASE NO. 09-11252 (REG)
14 **ISCI, INC.,** Chapter 11
15 Debtor, **SUPPLEMENTAL STATEMENT OF**
16 **THE CALIFORNIA DEPARTMENT OF**
17 **TOXIC SUBSTANCES CONTROL IN**
18 **SUPPORT OF PROOF OF CLAIM**
19
20 Judge Honorable Judge Robert E.
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INTRODUCTION

21 The California Department of Toxic Substances Control (“DTSC”), by and through its
22 attorney, the Office of the California Attorney General, by Thomas G. Heller, Deputy Attorney
23 General, submits this supplemental statement in support of its Proof of Claim in the bankruptcy
24 proceeding of Debtor, ISCI, Inc. (“Debtor”).

25 DTSC files this proof of claim to protect its rights to recover environmental response costs
26 in connection with the cleanup of contaminated property and groundwater, at and from a southern
27 California site known as the “BKK Site.” Debtor is liable under applicable environmental laws
28 for the environmental cleanup of the Site.

1 During the bankruptcy proceedings, a debtor in possession is required to comply with all
2 valid state and federal environmental laws. 28 U.S.C. § 959(b). Thus, DTSC asserts that by
3 filing this proof of claim, it does not waive its right to take enforcement action against Debtor to
4 ensure compliance with the requirements of environmental laws, regulations, and orders within
5 DTSC's jurisdiction, consistent with the provisions of 11 U.S.C. section 362(b)(4).

6 Based on information presently known to it, DTSC submits a claim for environmental
7 response costs in an unliquidated amount for the BKK Site. DTSC expressly reserves its rights
8 to amend this claim. Nothing in this proof of claim constitutes a waiver of any rights of DTSC or
9 an election of remedies by DTSC.¹

10 **BACKGROUND**

11 **I. THE CALIFORNIA DEPARTMENT OF TOXIC SUBSTANCES CONTROL ("DTSC")**

12 DTSC is a California state government agency. DTSC regulates all aspects of hazardous
13 waste management in California, and enforces laws related to the cleanup of hazardous
14 substances in California.

15 **II. DEBTOR'S LIABILITY TO DTSC UNDER THE HSAA AND CERCLA**

16 The laws that DTSC enforces include California's Hazardous Substances Account Act (the
17 "HSAA"), Cal. Health and Safety Code §§ 25300 et seq. The HSAA establishes a comprehensive
18 program for the cleanup of hazardous substances that have been released, or are threatened to be
19 released, into the environment. Under the HSAA, DTSC may seek recovery of response costs it
20 incurs in connection with such cleanup activities. The HSAA directs DTSC to recover any costs
21 it incurs in connection with such clean up activities from the liable parties. Cal. Health & Safety
22 Code § 25360.

23
24 ¹ Further, by filing this claim, DTSC does not waive its sovereign immunity, except as
25 otherwise provided by law. DTSC makes this claim for itself and no other agency, unit or entity
26 of the State of California. Any waiver of sovereign immunity under the law resulting from the
27 filing of this claim is by DTSC, and no other agency, unit or entity of the State of California, and
28 is strictly limited to this claim. Further, the filing of this claim shall not be deemed or construed
as a waiver of any objections or defenses that DTSC or any other agency, unit or entity of the
State of California may have to this Court's jurisdiction over DTSC or such other agency, unit or
entity based upon the Eleventh Amendment or related principles of sovereign immunity or
otherwise, all of which are hereby preserved.

1 Under California Health and Safety Code section 25323.5, liable parties are those parties
2 described in section 107 of the federal Superfund statute, the Comprehensive Environmental
3 Response, Compensation and Liability Act (“CERCLA”), 42 U.S.C. § 9607. CERCLA section
4 107(a), 42 U.S.C. § 9607(a), makes the following persons liable for all costs of removal or
5 remedial action incurred by DTSC:

- 6 (1) the owner and operator of a vessel or a facility;
- 7 (2) any person who at the time of disposal of any hazardous substances owned or
8 operated any facility at which such hazardous substances were disposed of;
- 9 (3) any person who by contract, agreement, or otherwise arranged for disposal or
10 treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous
11 substances owned or possessed by such person, by any other party or entity, at any facility or
12 incineration vessel owned or operated by another party or entity and containing such hazardous
13 substances; and
- 14 (4) any person who accepts or accepted any hazardous substances for transport to
15 disposal or treatment facilities, incineration vessels or sites selected by such person, from which
16 there is a release, or a threatened release which causes the incurrence of response costs, of a
17 hazardous substance.

18 In addition to its authority under the HSAA, DTSC may also bring a cost recovery action
19 against liable parties directly under CERCLA. *See* 42 U.S.C. § 9607(a). Under CERCLA, DTSC
20 may recover from liable parties all response costs, including interest, incurred by DTSC in
21 investigating, overseeing and cleaning up sites with releases or threatened releases of hazardous
22 substances. 42 U.S.C. § 9607(a). Under CERCLA and the HSAA, recoverable response costs
23 include, *inter alia*, direct costs, indirect costs, administrative costs, and oversight costs incurred
24 by DTSC in conducting and/or overseeing an environmental cleanup.

25 **III. DTSC’S CLAIM FOR THE BKK SITE**

26 DTSC’s claim against Debtor as to the BKK Site is for environmental response costs in an
27 unliquidated amount. DTSC presently has insufficient information regarding Debtor’s liability

1 regarding this Site to estimate the amount of DTSC's claim against Debtor. DTSC reserves its
2 right to amend this proof of claim when additional information about the Site becomes available.

3 The BKK Site is approximately 583 acres located at 2210 South Azusa Avenue, West
4 Covina, California. The BKK Site contains a closed hazardous waste "Class I Landfill" (i.e. a
5 hazardous waste landfill), a closed "Class III Landfill" (i.e. a municipal solid waste landfill), and
6 related facilities including a leachate treatment plant and gas and leachate collection systems.
7 The Class I Landfill is approximately 190 acres and accepted waste from roughly 1962 to 1987.
8 The Site is named after the BKK Corporation, which is the owner and operator of the Class I and
9 Class III Landfills.

10 More than four million tons of liquid and solid hazardous wastes, and a much larger volume
11 of nonhazardous solid waste (trash), were disposed of at the Class I Landfill. The types of
12 hazardous wastes that were disposed of in the greatest quantities at the BKK Class I Landfill
13 included acid solutions, alkaline solutions, contaminated soil and sand, drilling muds, oil and oil
14 sludge, paint waste, solvents, and tank bottom sediments. These hazardous wastes include known
15 and suspected carcinogens and mutagens that can affect the central nervous system and damage
16 internal organs at low levels if exposure occurs at certain concentration levels and over a certain
17 period of time.

18 The BKK Class I Landfill has no liner system, which means that waste was disposed
19 directly onto the ground, with no barrier between the waste and the native rock. The bedrock is
20 fractured, folded, and faulted, and provides multiple pathways for contaminants to migrate
21 downward and outward beyond the limits of the landfill. Because of these disposal practices,
22 contaminants seeped into the bedrock below the BKK Class I Landfill, and have migrated to
23 groundwater. Volatile organic compounds ("VOCs") have also been detected in soil gas at the
24 BKK Class I Landfill and in ambient air at or near the landfill. In 1984, methane and vinyl
25 chloride were detected in ambient air at concentrations that warranted the evacuation of nearby
26 residences.

27 In October 2004, BKK Corporation stated that it could not continue to conduct post-closure
28 care as it was required by law for the BKK Class I Landfill after November 17, 2004. Thereafter,

1 DTSC engaged a contractor to conduct emergency response activities and to operate and maintain
2 the critical equipment and systems on a daily basis.

3 In December 2004, pursuant to its regulatory authority, DTSC issued an “Imminent and
4 Substantial Endangerment Determination and Order and Remedial Action Order” (“ISE Order”)
5 to BKK Corporation and 50 other respondents who were alleged to be potentially responsible for
6 conditions at the BKK Site. The ISE Order required the respondents to conduct operation and
7 maintenance activities at the BKK Class I Landfill and the leachate treatment plant. Debtor was
8 not a respondent in that order.

9 In 2005, a group of twenty-six entities, most of whom had been respondents to the ISE
10 Order, joined together as the “BKK Working Group” and began reimbursing DTSC for a portion
11 of its response costs. In March 2006, the United States District Court for the Central District of
12 California entered a Consent Decree between DTSC and the BKK Working Group. The March
13 2006 Consent Decree required the BKK Working Group to perform certain projects and
14 operations at the BKK Class I Landfill and to pay for certain DTSC response costs. Debtor was
15 not a party to the Consent Decree.

16 Members of the BKK Working Group and DTSC are currently working on a successor
17 Consent Decree with a term of three years, requiring the BKK Working Group to conduct
18 additional response activities at the BKK Class I Landfill. DTSC may conduct or compel other
19 additional response actions as well, including actions to address groundwater contamination.

20 The BKK Site is still undergoing investigation, and the full extent of the contamination and
21 associated cleanup costs is not currently known. Based upon DTSC’s current knowledge of the
22 BKK Site, the nature of the hazardous substances released, and other available information,
23 DTSC estimates that the costs of the environmental response actions necessary at the Site will be
24 in excess of \$600,000,000. However, since the investigation at the BKK Site is continuing, and
25 the full extent of the contamination not yet finally determined, the estimated cleanup costs may
26 vary.

27 DTSC has determined that Debtor (or an entity for which Debtor is responsible) sent
28 hazardous waste or other hazardous substances to the BKK Site for disposal, under the names

1 Inland Specialty Chemical Corporation and/or Inland Chemical. Under CERCLA and the HSAA,
2 Debtor is therefore among the potentially responsible parties ("PRPs") at the BKK Site. DTSC
3 presently has insufficient information regarding Debtor's liability to present an estimate of
4 DTSC's claim against Debtor concerning the Site. Therefore, DTSC's claim against Debtor as to
5 the Site is for an unliquidated amount. DTSC expressly reserves its right to amend this proof of
6 claim when additional information about the Site becomes available.

7 **IV. DOCUMENTS SUPPORTING THIS PROOF OF CLAIM**

8 The documents supporting this proof of claim are voluminous. Documents pertinent to the
9 Site are available on DTSC's website at www.dtsc.ca.gov at the "EnviroStor" link, which is
10 searchable by site name and city location.

11 DTSC summarizes additional supporting documents as follows. Copies of these documents
12 can be requested by contacting the undersigned.

13 **1. DTSC's ISE Order and March 2006 Consent Decree for the Site**

14 These orders summarize the Site's history and environmental conditions as of the time of
15 their entry, and outline the legal obligations of the named respondents/defendants to perform or
16 fund certain environmental work at the Site.

17 **2. Hazardous Waste Manifests of Debtor for the Site**

18 These manifests reflect that Debtor (or an entity for which Debtor is responsible) sent
19 hazardous wastes or hazardous substances to the Site for disposal.

20 **3. DTSC's Summary by Activity Reports for the Site**

21 These reports summarize DTSC's oversight work to date at the BKK Site.

22 **4. DTSC's Site file for the BKK Site**

23 This file contains additional information regarding the necessary cleanup of the Site and
24 attendant costs.

25 **V. CONTINGENT, UNCERTAIN, OR UNKNOWN CLAIMS**

26 DTSC is informed and believes that Debtor may also be a liable party at an unknown
27 number of yet to be identified sites. DTSC reserves the right to assert claims against Debtor
28 under CERCLA and/or California law for response costs at other facilities where Debtor is

1 identified as a potentially responsible party. See, e.g., *In re Jensen*, 995 F.2d 925, 931 (9th Cir.
2 1993); *In re Chateaugay Corp.*, 944 F.2d 997, 1005 (2nd Cir. 1991). Accordingly, DTSC
3 reserves the right to assert presently unidentified claims for response costs that DTSC has
4 incurred, or will incur, at sites where there has been a release or threatened release of hazardous
5 substances, and where Debtor may be a responsible party.

6 || VI. NOTICES

7 All notices should be sent to the undersigned at the following address:

Dated: October 29, 2009

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
MARGARITA PADILLA
Supervising Deputy Attorney General



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